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ABSTRACT

This document describes the legal requirements for certificate suspension and revocation of North Carolina public-school teachers. Associated with its ability to administer teacher certification in the state, the State Board of Education also has the authority to suspend or revoke certificates. A question-and-answer section addresses issues of concern to school officials involved in the process. The appendix contains state laws relating to certificate suspension and revocation, specifically: the powers and duties of the Board generally; removal for cause; the duties of the superintendent, principal, and teachers, and penalties for making false reports or records. (LMI)

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A Series of Discussions on Legal Issues in Elementary and Secondary Education

SCHOOL MANAGEMENT ADVISOR

By Harry E. Wilson, Agency Legal Specialist

NORTH CAROLINA DEPARTMENT OF PUBLIC INSTRUCTION EDUCATION BUILDING, RALEIGH, NC 27601-2825 919/715-1000

Issue 28: 1993 BOB ETHERIDGE, SUPERINTENDENT OF PUBLIC INSTRUCTION

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LEGAL REQUIREMENTS

The basic authority for the State Board of Education to suspend or revoke certificates is found in G.S. 115C-295 and 115C-296(a). Employees may have their certificates suspended or revoked by the State Board of Education according to rules it has adopted under the authority of G.S. 115C-12(9)a. The Board may also suspend for the remainder of the school year the certificate of a teacher who resigns without giving at least 30 days' notice, pursuant to G.S. 115C-325(o). Other statutory provisions direct the Superintendent of Public Instruction to revoke a person's certificate. These include two reasons: a superintendent persistently fails to perform certain duties (G.S. 115C-274) or the person knowingly files false reports or records (G.S. 115C-276(p), 115C-288(b), 115C-307(g), and 115C-317). Relevant portions of these statutes are reproduced in the Appendix.

INTERPRETIVE ANALYSIS

The State Board of Education is charged with administering teacher certification in North Carolina. Associated with the ability to issue and renew certificates is the ability to suspend or revoke them as well. The State Board has long viewed this power as a responsibility to safeguard children from persons who are unfit to teach and to assure high standards among professional educators.

Once a person obtains a certificate, that person has a property interest in keeping the certificate. While the State Board of Education may lawfully establish terms and conditions for the issuance, denial, renewal, suspension or revocation of certificates, it may take one's certificate away only by observing the requirements of due process of law. This means that once the Board has established grounds for suspension or revocation, it may not act on its own to invalidate a certificate. At a minimum, the Board must notify the holder that it is considering suspension or revocation and then allow the person the opportunity for a hearing to challenge the proposed action.

Q: How often does the State Board revoke certificates?

A: The Board regularly receives revocation requests, and on average revokes about two certificates each month.

Q: How are revocation requests originated?

A: The Board's rule requires a written request and substantiating information from any LEA, local superintendent or other person in a position to present information relevant to revocable conduct. The most usual source is the employing school system, although the Department also receives information from private citizens and newspaper articles. A substantial number also come from other states with which North Carolina has a reciprocity agreement.

Q: What are the grounds for a certificate to be revoked?

A: There are nine grounds for suspension or revocation, as follows:

- fraud, material misrepresentation or concealment in the application for certification;
- changes in or corrections of the certificate documentation which make the individual ineligible to hold a certificate;
- conviction or entry of a plea of no contest, as an adult, of a crime if there is a reasonable

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and adverse relationship between the underlying crime and the continuing ability of the person to perform any of his/her professional functions in an effective manner;

- final dismissal of a person by a local board for immorality if there is a reasonable and adverse relationship between the underlying misconduct and the continuing ability of the person to perform any of his/her professional functions effectively;
- final dismissal of a person by a LEA for physical or mental incapacity;
- resignation from employment with a LEA without thirty work days' notice, except with the prior consent of the local superintendent;
- revocation of a certificate by another state;
- any other illegal, unethical or lascivious conduct by a person, if there is a reasonable and adverse relationship between the underlying conduct and the continuing ability of the person to perform any of his/her professional functions in an effective manner; and
- failure to report revocable conduct.

Q: What is "illegal, unethical or lascivious conduct"?

A: This phrase is intended to be broad enough to cover conduct that can support a criminal conviction, but no criminal charge was ever brought against the certificate holder. It may also include conduct that is not prohibited by criminal law, but which is clearly unacceptable in a school setting.

Q: Does the State ever deny certification? On what basis?

A: Yes. The State Board's rule permits the Department to deny issuing a certificate if there are grounds that would support revocation if the certificate had already been issued.

Q: Is it possible for a person to have a revoked certificate reinstated? How?

A: Yes. The person may petition the State Board for reinstatement and must show good cause to support reinstatement. However, the Board will not reinstate a certificate if:

- the action that resulted in revocation involved abuse of minors; possession, sale or use of controlled substances; moral turpitude, immorality or physical or mental incapacity; or
- the person has a record of subsequent behavior that could have resulted in certificate revocation; and there is court order or judicial determination that would prohibit the person from returning to a certificated position.

Q: Why can't revocation be automatic in some cases?

A: Persons who hold a certificate issued by the State Board of Education have a property right in retaining that certificate. The State Board can take away a certificate, either by suspension or revocation, only by due process of law. This means that the holder must be given notice of the grounds for suspension or revocation and an opportunity to challenge the proposed suspension or revocation before it takes place. Some years ago the courts ruled that the U.S. Constitution does not allow the State Board to revoke a certificate, then notify the holder of the right to a hearing in which the holder may seek reinstatement.

Q: How does the State Board's revocation process work?

A: After the Department receives information concerning a possible revocation, staff examines that information and gathers any additional information needed to determine that grounds exist for revocation. The State Superintendent then signs a Determination of Reasonable Cause and Statement of Charges which the State Board of Education reviews. If the Board concurs that grounds exist for suspension or revocation, it votes to recommend that action be taken against the certificate. The Department mails notice to the holder, who has 60 days after mailing to contest the proposed action. The Board may suspend or revoke the certificate at the end of the 60 days if the holder has not contested the action, or after receiving a proposed decision issued in a

contested action.

Q: How does someone challenge a revocation action?

A: The holder may file a petition for a contested case with the Office of Administrative Hearings. This must be done within 60 days after the notice is mailed to the holder. An administrative law judge is assigned to the case and a hearing date is set. The administrative law judge hears from each side and makes a proposed decision to the State Board, which can accept or modify the decision as long as there is substantial evidence to support any modifications.

Q: Why can the revocation process take so long?

A: If the person does challenge the action, an independent agency, the Office of Administrative Hearings, hears the challenge and issues a proposed decision. Since there are a limited number of administrative law judges who hear contested cases against all State agencies and the hearings are held in the local community, hearings are often scheduled a number of weeks after the State Board first considered the matter.

Q: What does the State Board's revocation rule mean when it refers to mandatory reporting of physical and sexual abuse of children? Is this the same kind of abuse that we must report under G.S. 115C-400?

A: No, these are different terms. The statutory duty to report child abuse applies to the crime covered by the Juvenile Code. According to that law, "child abuse" may only be committed by a parent or other person responsible for the juvenile's care. This may include a day care provider or other person who provides parental care. The State Board rule is much broader. It applies to physical or sexual mistreatment of children by teachers or other certificated employees.

Q: What is the purpose of this mandatory reporting provision?

A: On a number occasions when local school officials have found that a teacher has had some sexual contact or similar behavior with a student, those officials have allowed the teacher to resign rather than to face dismissal proceedings. In some cases the school system has even offered to supply a letter of recommendation to other school systems to which the teacher might apply for employment. The State Board of Education adopted its mandatory reporting requirement to prevent this situation from happening again.

Q: At what point must school personnel report these incidents of mistreatment? Must the report occur as soon as someone claims that a staff member committed the conduct, or must there be a criminal conviction?

A: The rule requires reporting when the school administrator "knows or has substantial reason to believe" that the conduct has occurred. The mere receipt of a complaint that a school employee mistreated a student is not enough to require reporting. At the least, there must have been some sort of internal investigation that indicates the staff member probably committed the act. This need not be a formal process.

Q: How can the State Board be sure that school administrators will report these matters to it?

A: While the Board has no assurance that there will be uniform and total compliance with this rule, it does believe that our school administrators are dedicated, competent professionals who have the best interests of students in mind. This being so, the Board expects that the great majority of administrators will welcome this requirement as an additional means to deal effectively with this type of personnel problem.

Q: What consequences might a school administrator expect for failing to report?

A: The rule states that one who fails to make the required report is subject to certificate revocation. There may be additional civil consequences as well. For example, if the employee is allowed or encouraged to move to another school system where the employee harms a child, the administrator may be personally

liable for civil damages for failing to act to prevent foreseeable harm.

Q: Why does this rule only apply to school administrators? Why shouldn't it apply to teachers also?

A: The rule applies only to administrators since they are in the best position to know of and deal effectively with the improper conduct. While teachers may and often do inform administrators of the same types of conduct covered by the rule, school administrators are often more likely to be aware of the conduct. Taking action on that information is a supervisory responsibility.

APPENDIX

State Laws Relating to Certificate Suspension and Revocation

§ 115C-12. Powers and duties of the Board generally.

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish policy for the system of free public schools, subject to laws enacted by the General Assembly. The powers and duties of the State Board of Education are defined as follows:

(9) Miscellaneous Powers and Duties.—All the powers and duties exercised by the State Board of Education shall be in conformity with the Constitution and subject to such laws as may be enacted from time to time by the General Assembly. Among such duties are:

a. To certify and regulate the grade and salary of teachers and other school employees.

§ 115C-274. Removal for cause.

(b) If the superintendent shall fail in the duties enumerated in G.S. 115C-276(g) through (i) or such other duties as may be assigned him, he shall be subject, after notice, to an investigation by the Superintendent of Public Instruction or by his board of education for failure to perform his duties. For persistent failure to perform these duties, his certificate may be revoked by the Superintendent of Public Instruction, or he may be dismissed by his board of education.

§ 115C-276. Duties of superintendent.

(p) To Require Teachers and Principals to Make Reports. — The superintendents may require teachers to make reports to the principals and principals to make reports to the superintendent. Any superintendent who knowingly and willfully makes or procures another to make any false report or records, requisitions, or payrolls, respecting daily attendance of pupils in the public schools, payroll data sheets, or other reports required to be made to any board or officer in the performance of his duties, shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court and the certificate of such person to teach in the public schools of North Carolina shall be revoked by the Superintendent of Public Instruction.

§ 115C-288. Powers and duties of principal.

(b) To Make Accurate Reports to the Superintendent and to the Local Board. — The principal shall make all reports to the superintendent. Every principal of a public school shall make such reports as are required by the boards of education, and the superintendent shall not approve the vouchers for the pay of principals until the required monthly reports and annual reports are made: Provided, that the superintendents may require teachers to make reports to the principals and principals to make reports to the superintendent: Provided further, that any principal or supervisor who knowingly and willfully makes or procures another to make any false report or records, requisitions, or payrolls, respecting daily attendance of pupils in the public schools, payroll data sheets, or other reports required to be made to any board or officer in the performance of his duties, shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court and the certificate of such person to teach in the public schools of North Carolina shall be revoked by the Superintendent of Public Instruction.

§ 115C-307. Duties of teachers.

(g) To Make Required Reports. — Every teacher of a public school shall make such reports as are required by the boards of education, and the superintendent shall not approve the vouchers for the pay of teachers until the required monthly and annual reports are made: Provided, that the superintendents may require teachers to make reports to the principals. Provided further, that any teacher who knowingly and willfully makes or procures another to make any false report or records, requisitions, or payrolls respecting daily attendance of pupils in the public schools, payroll data sheets, or other reports required to be made to any board or officer in the performance of their duties, shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court and the certificate of such person to teach in the public schools of North Carolina shall be revoked by the Superintendent of Public Instruction.

§ 115C-317. Penalty for making false reports or records.

Any school employee of the public schools other than a superintendent, principal, or teacher, who knowingly and willfully makes or procures another to make any false report or records, requisitions, or payrolls, respecting daily attendance of pupils in the public schools, payroll data sheets, or other reports required to be made to any board or officer in the performance of his duties, shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court and the certificate of such person to teach in the public schools of North Carolina shall be revoked by the Superintendent of Public Instruction.

§ 115C-325. System of employment for public school teachers.

(o) Resignation; Nonrenewal of Contract. — A teacher, career or probationary, should not resign without the consent of the superintendent unless he has given at least 30 days' notice. If the teacher does resign without giving at least 30 days' notice, the board may request that the State Board of Education revoke the teacher's certificate for the remainder of that school year. A copy of the request shall be placed in the teacher's personnel file.

FOR FURTHER READING:

Allred, "Recruiting and Selecting New School Employees," School Law Bulletin, Fall 1987.

School Management Advisor, Issue 22, Employment Basics.

School Management Advisor, Issue 23, Employment at Will.

School Management Advisor, Issue 24, Reduction in Force.

School Management Advisor, Issue 25, Nonrenewal of Probationary Teachers.

School Management Advisor, Issue 26, Dismissal of Career Status Employees.

School Management Advisor, Issue 27, Negligent Hiring and Retention.